

III. The Commission's Concerns About The Cost And Availability Of Cable Sports Programming Are Addressed Directly Through Existing Regulations.

The Further Notice seeks comment on "the cost of subscribing to cable services that provide sports programming," including "subscription rates for regional sports channels and whether these channels are available on a tiered or a la carte basis." Further Notice at ¶12. The Commission also seeks comment on the location of households that "do not have access to non-broadcast services...in order to determine if access problems disproportionately affect potential viewers of certain teams games." Id. The Commission contends that such information "will be useful in assessing the impact of present or future sports programming migration." Id. ARC respectfully submits that these issues already have been addressed directly in other proceedings and through other regulations.⁷

ARC seeks carriage of its regional sports programming services on the basic tier wherever possible. See, e.g., ARC's Petition for Reconsideration in MM Docket No. 92-266,

⁷ These inquiries also appear to be irrelevant to the study mandated by Congress. Congress required the Commission to "investigate and analyze trends in the migration of sports programming," and the Commission tentatively has found no "migratory trend toward cable." Interim Report at ¶85. Absent such trend, further inquiry into the subscription rates and general availability of cable sports programming services appears to have little to do with Congress' concern over whether there has been "a significant reduction in the quality or quantity of sports programming available on free television." Cable Television Consumer Protection and Competition Act of 1992, H.R. Rep. No. 102-628, 102d Cong., 2d Sess. 125 (1992).

filed June 21, 1993 ("ARC Rate Petition"), at 6-7. If basic carriage cannot be obtained, ARC seeks carriage on the next most popular service tier. Id. To date, ARC has been successful in obtaining such carriage for the programming services which it manages in the vast majority of cases. For example, the ARC-managed regional sports networks identified in Exhibits 1 and 2 currently are carried on over 1800 cable systems and serve over 13,000,000 cable subscribers. Over 95 percent of those systems -- accounting for nearly 99 percent of all subscribers to ARC-managed regional sports services -- currently carry the regional sports service on basic or another regulated service tier.⁸ Thus, in spite of the Commission's concern that "for most television households, the issue is price," the fact is that nearly all subscribers to ARC's regional cable sports services currently receive those services at rates established by FCC regulation.

The Commission's concern over the location of households that "do not have access to non-broadcast services" is equally unwarranted for ARC's regional cable sports programming services. While cable is estimated to pass 98 percent of all television households (Further Notice at n.9), HSDs are universally available. In fact, ARC maintains a separate division devoted exclusively to serving HSD owners. All of

⁸ However, ARC repeatedly informed the Commission that its benchmark rate regulations provide significant incentives for cable operators to shift regional sports services to a la carte offerings. See ARC Rate Petition at 5-13.

the ARC-managed regional sports networks and the Prime Network backdrop feed are available for distribution to HSD owners, subject only to blackout requirements imposed under the rights agreements negotiated between the regional networks and the respective leagues or teams whose games are being televised. Thus, residents of television homes not already passed by cable can readily obtain access to regional cable sports programming through HSDs.⁹ Moreover, because ARC's regional sports services are affiliated with cable operators, the Commission's program access regulations impose certain obligations to provide other distributors nondiscriminatory access to those services. Thus, there is no basis for the Commission's concern that the price or availability of ARC's regional programming services may "disproportionately affect potential viewers of certain teams' games." Further Notice at ¶12.¹⁰

Conclusion

The record confirms that marketplace forces have operated to maximize the diversity of sports programming available to broadcast and cable television viewers. There is no evidence that "migration" of sports programming presents any

⁹ In addition, the same services soon will be available on the PrimeStar DBS service.

¹⁰ Ironically, the Commission has never conducted such a "location" inquiry to determine whether "access problems disproportionately affect potential viewers" of other kinds of information and entertainment programming services.

significant problem now or in the future. Clearly, the record in this proceeding provides no factual or legal justification for recommending any legislative or regulatory remedy.

April 11, 1994

Respectfully submitted,

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